

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-versus-

TIMOTHY FRAZIER,

Defendant.

90 Cr. 913 (LAP)

ORDER

LORETTA A. PRESKA, SENIOR UNITED STATES DISTRICT JUDGE:

Before the Court is Defendant Timothy Frazier's motion for a hearing or, in the alternative, for summary judgment. (Dkt. no. 561.) For the reasons set out below, the motion is denied.

The controversy arose in connection with Defendant's inquiry to the Court about the status of the case. (Dkt. no. 545.) In responding, the Court noted that, following his plea, the Defendant "was sentenced to one year imprisonment (dkt. no. 144)," referring to the docket entry accompanying the judgment. (Dkt. no. 546.) The Government responded promptly (dkt. no. 551), attaching a copy of the actual judgment reflecting a sentence of 121 months imprisonment. The Government noted that it had attempted to but was unsuccessful in locating the transcript of the Defendant's sentencing hearing. Accordingly, the Court withdrew its mistaken order. (Dkt. no. 553.)

Defendant thereafter moved to compel the Government to produce a copy of his sentencing transcript. (Dkt. no.

557.) In response, the Government reported that, following Defendant's motion to compel, it had again contacted the Probation Office and the court reporters' office and again searched available Government files but was still unable to locate Defendant's sentencing transcript. (Dkt. no.

559.) Accordingly, the Court denied Defendant's motion to compel. (Dkt. no. 560.)

In response to Defendant's current motion for a hearing, the Government again recited the steps it has taken to locate the sentencing minutes and reiterated its suggestion that the erroneous docket entry was the result of a typographical error, typing 12 instead of 121 months. (Dkt. no. 565.) It noted that all of the other details of the judgment, including date, count of conviction, term of supervised release, and special conditions of supervised release, were reflected accurately in the docket entry.

The Government also noted that the judgment reflects the Court's determination that Defendant's Sentencing Guidelines Range was 121 to 151 months of imprisonment and that the Court's typewritten notes on the same page state that the Defendant's "sentence is at the bottom of the range." (Dkt. no. 551-1.) Finally, the Government noted that the judgment is signed and stamped.

The Court finds that Defendant was sentenced to 121 months incarceration. There is no credible evidence to the contrary, so his request for a hearing is denied.


Defendant's alternative motion for summary judgment is denied as that is a remedy not available in criminal matters.

Conclusion

Defendant's motion for a hearing and, in the alternative, for summary judgment (Dkt. no. 561) is denied.

SO ORDERED.

Dated: June 29, 2020
New York, New York

A handwritten signature in black ink, reading "Loretta A. Preska". The signature is written in a cursive, flowing style.

LORETTA A. PRESKA, U.S.D.J.